



BILLING CODE 4333-15

## **DEPARTMENT OF THE INTERIOR**

### **Fish and Wildlife Service**

#### **50 CFR Part 92**

**[Docket No. FWS–R7–MB–2016–0136; FF09M21200-167-FXMB1231099BPP0]**

**RIN 1018–BB71**

### **Migratory Bird Subsistence Harvest in Alaska During the 2017 Season**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** The U.S. Fish and Wildlife Service (Service or we) is proposing migratory bird subsistence harvest regulations in Alaska for the 2017 season. These proposed regulations would allow for the continuation of customary and traditional subsistence uses of migratory birds in Alaska and prescribe regional information on when and where the harvesting of birds may occur. These proposed regulations were developed under a co-management process involving the Service, the Alaska Department of Fish and Game, and Alaska Native representatives. The rulemaking is necessary because the regulations governing the

subsistence harvest of migratory birds in Alaska are subject to annual review. This rulemaking would establish region-specific regulations that would go into effect on April 2, 2017, and expire on August 31, 2017.

**DATES:** We will accept comments received or postmarked on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. We must receive requests for public hearings, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** by **[INSERT DATE 15 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** You may submit comments by one of the following methods:

- Federal eRulemaking Portal: *<http://www.regulations.gov>*. Follow the instructions for submitting comments to Docket No. FWS–R7–MB–2016–0136.
- U.S. mail or hand-delivery: Public Comments Processing, Attn: FWS–R7–MB–2016–0136; Division of Policy, Performance, and Management Programs; U.S. Fish and Wildlife Service; 5275 Leesburg Place, MS: BPHC; Falls Church, VA 22041-3803.

We will not accept e-mail or faxes. We will post all comments on *<http://www.regulations.gov>*. This generally means that we will post any personal information you provide us (see the **Public Comment Procedures** section, below, for more information).

**FOR FURTHER INFORMATION CONTACT:** Donna Dewhurst, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Mail Stop 201, Anchorage, AK 99503; (907) 786-3499.

## **SUPPLEMENTARY INFORMATION:**

### **Public Comment Procedures**

To ensure that any action resulting from this proposed rule will be as accurate and as effective as possible, we request that you send relevant information for our consideration. The comments that will be most useful and likely to influence our decisions are those that you support by quantitative information or studies and those that include citations to, and analyses of, the applicable laws and regulations. Please make your comments as specific as possible and explain the basis for them. In addition, please include sufficient information with your comments to allow us to authenticate any scientific or commercial data you include.

You must submit your comments and materials concerning this proposed rule by one of the methods listed above in **ADDRESSES**. We will not accept comments sent by e-mail or fax or to an address not listed in **ADDRESSES**. If you submit a comment via *<http://www.regulations.gov>*, your entire comment—including any personal identifying information, such as your address, telephone number, or e-mail address—will be posted on the Web site. When you submit a comment, the system receives it immediately. However, the comment will not be publicly viewable until we post it, which might not occur until several days after submission.

If you mail or hand-carry a hardcopy comment directly to us that includes personal information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. To ensure

that the electronic docket for this rulemaking is complete and all comments we receive are publicly available, we will post all hardcopy comments on <http://www.regulations.gov>.

In addition, comments and materials we receive, as well as supporting documentation used in preparing this proposed rule, will be available for public inspection in two ways:

(1) You can view them on <http://www.regulations.gov>. Search for FWS–R7–MB–2016–0136, which is the docket number for this rulemaking.

(2) You can make an appointment, during normal business hours, to view the comments and materials in person at the Division of Migratory Bird Management, MS: MB, 5275 Leesburg Pike, Falls Church, VA 22041-3803; (703) 358-1714.

### **Public Availability of Comments**

As stated above in more detail, before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

### **Length of Comment Period**

Implementation of the Service’s 2013 supplemental environmental impact statement on the hunting of migratory birds has resulted in changes to the overall timing of the annual regulatory schedule for the establishment of migratory bird hunting regulations and the Alaska

migratory bird subsistence-harvest regulations. That is, moving the annual Service Regulations Committee meeting from July to October has greatly shortened our period to publish the proposed regulations and solicit comments. We are further bounded by a subsistence-harvest start date of April 2, 2017, making a 60-day comment period problematic and increasing the risk of not having regulations established before the start of the subsistence season. Thus, we have established a 30-day comment period for this proposed rule (see **DATES**, above), and we will be conducting tribal consultations within Alaska simultaneously. A 30-day comment period gives the public adequate time to provide meaningful comments.

### **Why Is This Rulemaking Necessary?**

This rulemaking is necessary because, by law, the migratory bird harvest season is closed unless opened by the Secretary of the Interior, and the regulations governing subsistence harvest of migratory birds in Alaska are subject to public review and annual approval. This proposed rule would establish regulations for the taking of migratory birds for subsistence uses in Alaska during the spring and summer of 2017. This proposed rule also sets forth a list of migratory bird season openings and closures in Alaska by region.

### **How Do I Find the History of These Regulations?**

Background information, including past events leading to this rulemaking, accomplishments since the Migratory Bird Treaties with Canada and Mexico were amended, and a history, were originally addressed in the **Federal Register** on August 16, 2002 (67 FR 53511) and most recently on April 1, 2016 (81 FR 18781).

Recent **Federal Register** documents and all final rules setting forth the annual harvest regulations are available at <http://www.fws.gov/alaska/ambcc/regulations.htm> or by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

### **What Is the Process for Issuing Regulations for the Subsistence Harvest of Migratory Birds in Alaska?**

The U.S. Fish and Wildlife Service is proposing migratory bird subsistence-harvest regulations in Alaska for the 2017 season. These proposed regulations would allow for the continuation of customary and traditional subsistence uses of migratory birds in Alaska and prescribe regional information on when and where the harvesting of birds may occur. These proposed regulations were developed under a co-management process involving the Service, the Alaska Department of Fish and Game, and Alaska Native representatives.

The Alaska Migratory Bird Co-management Council (Co-management Council) held meetings on April 6–7, 2016, to develop recommendations for changes that would take effect during the 2017 harvest season. The Co-management Council also amended the consent agenda package of carry-over regulations to request a limited emperor goose harvest for 2017; these recommended changes were presented first to the Pacific Flyway Council and then to the Service Regulations Committee (SRC) for approval at the SRC meeting on July 31, 2015.

### **Who Is Eligible To Hunt Under These Regulations?**

Eligibility to harvest under the regulations established in 2003 was limited to permanent residents, regardless of race, in villages located within the Alaska Peninsula, Kodiak

Archipelago, the Aleutian Islands, and in areas north and west of the Alaska Range (50 CFR 92.5). These geographical restrictions opened the initial migratory bird subsistence harvest to about 13 percent of Alaska residents. High-populated, roaded areas such as Anchorage, the Matanuska-Susitna and Fairbanks North Star boroughs, the Kenai Peninsula roaded area, the Gulf of Alaska roaded area, and Southeast Alaska were excluded from eligible subsistence harvest areas.

In response to petitions requesting inclusion in the harvest in 2004, we added 13 additional communities consistent with the criteria set forth at 50 CFR 92.5(c). These communities were Gulkana, Gakona, Tazlina, Copper Center, Mentasta Lake, Chitina, Chistochina, Tatitlek, Chenega, Port Graham, Nanwalek, Tyonek, and Hoonah, with a combined population of 2,766. In 2005, we added three additional communities for glaucous-winged gull egg gathering only in response to petitions requesting inclusion. These southeastern communities were Craig, Hydaburg, and Yakutat, with a combined population of 2,459, according to the latest census information at that time.

In 2007, we enacted the Alaska Department of Fish and Game's request to expand the Fairbanks North Star Borough excluded area to include the Central Interior area. This action excluded the following communities from participation in this harvest: Big Delta/Fort Greely, Healy, McKinley Park/Village, and Ferry, with a combined population of 2,812.

In 2012, we received a request from the Native Village of Eyak to include Cordova, Alaska, for a limited season that would legalize the traditional gathering of gull eggs and the hunting of waterfowl during spring. This request resulted in a new, limited harvest of spring waterfowl and gull eggs starting in 2014.

## **What Is Different in the Regulations for 2017?**

### *Subpart C*

Under subpart C, General Regulations Governing Subsistence Harvest, we are proposing to amend § 92.22, the list of birds open to subsistence harvest, by adding emperor goose (*Chen canagica*) and by amending cackling goose to allow egg gathering.

The Co-management Council proposed a new emperor goose limited subsistence hunt for the 2016 season. Since 2012, the Co-management Council has received regulatory proposals from the Sun'aq Tribe of Kodiak, the Kodiak-Aleutians Subsistence Regional Advisory Council, the Yaquillrit Keutisti Council (Bristol Bay), and the Bering Strait/Norton Sound Migratory Bird Council (Kawerak) to open the harvest of emperor geese for the subsistence season. Since the hunting season has been closed since 1987 for emperor geese, the Co-management Council created a subcommittee to address these proposals. The emperor goose harvest was guided by the 2006 Pacific Flyway Management Plan and the 2005–2006 Yukon-Kuskokwim Delta Goose Management Plan. Between 80 and 90 percent of the emperor goose population breeds on the Yukon-Kuskokwim Delta of Alaska, and most emperor geese winter in remote western Alaska, with the remainder wintering in Russia.

Two studies were conducted concurrently by the Service and the Alaska Department of Fish and Game. The first study provided a comprehensive evaluation of all available emperor goose survey data and assessed harvest potential of the population. The second study developed a Bayesian state space population model to improve estimates of population size by integrating current population assessment methods using all available data sets. The model



provides a framework from which to make inferences about survival rates, age structure, and population size. The results of these studies will assist in amending the management plans.

The 2016 spring emperor goose survey was conducted April 21–24, 2016. The spring index was 79,348 birds, which represented a 19.2 percent decrease from the previous count in 2015. The current 3-year (2014–2016) average count of 85,795 is 4.8 percent above the previous 3-year (2012–2015 [no survey in 2013]) average of 81,875. Further, it is above the threshold for consideration of an open hunting season on emperor geese as specified in the Yukon-Kuskokwim Delta Goose Management Plan and the Pacific Flyway Council Management Plan for emperor geese.

As a result of this new information, the Co-management Council amended their motion of the consent agenda to add an allowance for a limited emperor goose harvest in 2016. The Pacific Flyway Council met in July 2015, and supported the Co-management Council's recommendation to work with the State of Alaska and the Service to develop harvest regulations and monitoring for a limited emperor goose harvest in 2016. On July 31, 2015, the SRC supported the Co-management Council's proposed limited harvest of emperor geese for the 2016 Alaska spring and summer subsistence season. However, the approval was provisional based upon the following:

- (1) A limited harvest of 3,500 emperor geese to ensure that population growth continues toward the Flyway management plan objective;
- (2) A harvest allocation (e.g., an individual, family, or Village quota or permit hunt) that ensures harvest does not exceed 3,500;
- (3) Agreement on a monitoring program to index abundance of the emperor goose

population; and

(4) A revised Pacific Flyway Emperor Goose Management Plan, including harvest allocation among all parties (including spring/summer and fall/winter), population objective, population monitoring, and thresholds for season restriction or closure.

The harvest allocation design and harvest monitoring plan were to be completed by November 1, 2016. Additionally, there was an explicit statement that the limited, legalized harvest of 3,500 birds was not in addition to existing subsistence harvest (approximately 3,200 emperor geese). The 3,500-bird allowable harvest was to be allocated to subsistence users during the spring and summer subsistence season. The SRC suggested that the allowable harvest should be monitored to ensure it does not exceed 3,500 birds.

On August 13–14, and September 21, 2015, the Co-management Council Native Caucus met separately and with all partners to discuss options available to limit and monitor the harvest, as well as options to allocate the 3,500 birds across the six regions where emperor geese occur. Given the limited time provided to address the four conditions placed on this new harvest by the SRC, all partners agreed that the best course of action would be to spend additional time working together to develop a culturally sensitive framework tailored to each participating region that conserves the population and adequately addresses the data needs of all partners. In support of this recommendation, the Co-management Council took action to: Postpone an emperor goose harvest until 2017; work with all partners to develop the harvest framework; and work with their Emperor Goose Subcommittee and the Pacific Flyway Council on updating the Pacific Flyway Emperor Goose Management Plan.

In 2016, work continued on the Alaska Migratory Bird Co-management Council draft

Management Plan for emperor geese. The Co-management Council's Management Plan was the first of its kind developed cooperatively for managing the emperor goose population of Alaska and was signed by the Co-management Council on September 1, 2016. Adoption of the Co-management Council's Emperor Goose Management Plan was contingent on the adoption of the Pacific Flyway Emperor Goose Management Plan by the Pacific Flyway Council. The Pacific Flyway Council adopted the 2016 Pacific Flyway Emperor Goose Management Plan on September 30, 2016. The Co-management Council's Management Plan specifies regulations for the spring/summer subsistence hunt period and will serve as a companion to the 2016 revision of the Pacific Flyway Management Plan for the Emperor Goose, which specifies regulations for the fall/winter harvest of emperor geese. The Co-management Council's Management Plan supersedes the Yukon-Kuskokwim Delta Goose Management Plan for emperor goose management. In both management plans, the spring survey index was been replaced by a summer survey index of indicated total birds (total bird index) derived from aerial surveys of emperor goose abundance on the Yukon-Kuskokwim Delta (YKD Coastal Zone Survey). The total bird index is less biased and more precise than the spring survey index and is based on statistical sampling theory. The 2016 survey index was 34,109 (SE = 2,490) emperor geese, which equates to a total range-wide population of about 177,000 geese. The most recent three-year (2014–2016) average population index is 30,965 emperor geese; representing a total range-wide population of about 161,000 geese. The Co-management Council's Plan for the emperor goose establishes a population objective consistent with the abundance achieved in 2016 (i.e., abundance index = 34,109) after about 30 years of hunting season closures.

The total bird index and population objective are viewed as interim strategies that will be reevaluated after 3 years of the Co-management Council's Management Plan implementation, while other population-assessment models are further evaluated, refined and an agreement developed on the most appropriate short- and long-term survey protocols. The Co-management Council's Management Plan outlines an emperor goose harvest strategy based on using a total bird index from the YKD Coastal Zone Survey to assess population status relative to a regulatory harvest threshold. The total bird index is a relative measure of population size based on the number of geese detected from aerial surveys on the Yukon-Kuskokwim Delta during the early nesting period. The Co-management Council's Plan allows for an open subsistence harvest when the YKD Coastal Zone Survey index equals or exceeds 28,000 geese, which equates to a total range-wide population size of about 146,000 geese based on current model-based estimates. A more restrictive harvest quota will be considered if the population index declines below 28,000 geese to help reduce the probability for a subsequent closed season. The harvest season will be closed if the population index declines below 23,000 emperor geese, which equates to a total range-wide population size of about 120,000 geese. The decision to restrict the harvest quota when the population is between 23,000 and 28,000 geese depends on Co-management Council recommendations to the Service after review of current year population status relative to the objective, trends, and other information. The Service maintains authority to establish a more conservative quota for allowable take if determined appropriate.

The population thresholds for consideration of hunting season restrictions and closure represent about 80% and 70% of the population objective (i.e., abundance level achieved in

2016; 34,109 geese). Selection of these thresholds by the Council and AMBCC where informed by an analysis conducted by the Service. The analysis derived the optimal hunting season closure threshold given conservation and harvest objectives, uncertainty in abundance and harvest estimation, and a predictive demographic model (E. Osnas and C. Frost, U.S. Fish and Wildlife Service, unpublished report).

The term of this harvest strategy is 5 years. However, during the 3-year period (2017–2019) following implementation, the Subcommittee will annually review available data (e.g., harvest survey data, population status and trend, and other relevant information) and consider the need for conservation measures. After the 3-year period, the Subcommittee will conduct a thorough analysis of the available data to determine efficacy of the harvest strategy and will consider alternative strategies if warranted. Alternatives will be considered as amendments to the management plan and be effective for the remainder of the 5-year term. The spring/summer subsistence harvest-strategy is complementary to the fall/winter harvest strategy included in the Pacific Flyway Emperor Goose Management Plan. In recognition that emperor geese are a shared resource, the Co-Management Council has established the following spring/summer subsistence-harvest guidelines:

(1) The harvest strategy seeks to maintain a population of emperor geese above an index of 23,000 birds based on the total bird index from the most recent YKD Coastal Zone Survey;

(2) If the total bird index from the previous year is greater than 23,000 birds, then spring/summer subsistence harvest of emperor geese will be open to customary and traditional practices;

(3) If the total bird index from the previous year drops below 28,000 birds, the Co-management Council will consider implementing conservation measures that include: increased outreach and education programs, reduced season length (e.g., 2-week harvest season), extension of the 30-day closure, cessation of egg collection, limiting hunting to elder and ceremonial harvest only, or other measures as identified by the parties to the management plan; and

(4) If the total bird index from the previous year is less than 23,000 birds, then emperor goose hunting will be closed.

The Service finds that this proposal will provide for the preservation and maintenance of emperor geese in Alaska. See 16 U.S.C. 712(1).

The Association of Village Council Presidents' Waterfowl Conservation Committee submitted a proposal to open egg gathering of the cackling goose subspecies of Canada goose (*Branta canadensis*) in the Yukon/Kuskokwim Delta Region of Alaska. Currently all of the cackling geese nest on the Yukon/Kuskokwim Delta. The 2016 fall cackling Canada goose population index is  $327,453 \pm 21,104$  (SE) birds and the 3-year (2014–2016) average is 320,658 birds. These estimates are 5.7 percent below and 0.9 percent above, respectively, those reported in 2015, and above the population objective threshold of 250,000 birds. The Co-management Council voted in April 2016 to support the proposal with the modification that the dates for egg collecting would be lumped with the existing harvest season that is announced

annually by the Service's Regional Director or his designee, after consultation with field biologists and the Association of Village Council Presidents' Waterfowl Conservation Committee. This season would include a 30-day closure to protect nesting birds. Likewise, we find that this proposal will provide for the preservation and maintenance of the subspecies population of cackling geese.

#### *Subpart D*

The regulations we are proposing for subpart D, Annual Regulations Governing Subsistence Harvest, include changes from our 2016 regulations for the Prince William Sound East and Northwest Arctic regions as discussed below.

The Chugach Regional Resource Commission submitted a proposal to open the Cordova subsistence harvest, in the barriers islands of Prince William Sound, to include residents of Tatitlek and Chenega Bay. This would allow residents of these two small communities to also be able to take advantage of this limited harvest opportunity in their area. The number of participants from Cordova is much smaller than originally anticipated; thus, it is likely that added eligibility for these two small communities would not pose a significant increase in harvest. The Co-management Council supported this proposal with the provision that registration would be available in each community, and outreach on the regulations.

The Northwest Arctic Regional Council submitted a proposal to amend hunting season dates to reflect a trend for earlier spring migration and to be able to hunt molting geese that stage in their area. In subsequent meetings between the Service and the Regional Council, dates were adjusted and clarified to have waterfowl harvest, including hunting and egg

gathering, from April 2 through June 14, which would resume July 16, after the required 30-day nesting closure. The harvest of nonbreeding, molting geese would run July 1 through July 15. The Co-management Council unanimously supported the amended dates at their Statewide meeting in April 2016.

**How Will the Service Ensure That the Subsistence Migratory Bird Harvest Complies with the Migratory Bird Treaty Act, and Will Not Threaten the Conservation of Endangered and Threatened Species?**

We have monitored subsistence harvest for the past 25 years through the use of household surveys in the most heavily used subsistence harvest areas, such as the Yukon–Kuskokwim Delta. In recent years, more intensive surveys combined with outreach efforts focused on species identification have been added to improve the accuracy of information gathered from regions still reporting some subsistence harvest of listed or candidate species.

Based on our monitoring of the migratory bird species and populations taken for subsistence, we find that this proposed regulation will provide for the preservation and maintenance of migratory bird stocks as required by the Migratory Bird Treaty Act. The Act’s 16 U.S.C. 712(1) provision states that Service “is authorized to issue such regulations as may be necessary to assure that the taking of migratory birds and the collection of their eggs, by the indigenous inhabitants of the State of Alaska, shall be permitted for their own nutritional and other essential needs, as determined by the Secretary of the Interior, during seasons established so as to provide for the preservation and maintenance of stocks of migratory birds.”

Communication and coordination between the Service, the Co-management Council, and the



Pacific Flyway Council have allowed us to set harvest regulations to ensure the long-term viability of the migratory bird stocks. In addition, Alaska migratory bird subsistence harvest rates have continued to decline since the inception of the subsistence-harvest program, reducing concerns about the program's consistency with the preservation and maintenance of stocks of migratory birds.

As for the ensuring the conservation of Endangered Species Act-listed species, Spectacled eiders (*Somateria fischeri*) and the Alaska-breeding population of Steller's eiders (*Polysticta stelleri*) are listed as threatened species. Their migration and breeding distribution overlap with areas where the spring and summer subsistence migratory bird hunt is open in Alaska. Both species are closed to hunting, although harvest surveys and Service documentation indicate both species are taken in several regions of Alaska.

The Service has dual objectives and responsibilities for authorizing a subsistence harvest while protecting migratory birds and threatened species. Although these objectives continue to be challenging, they are not irreconcilable, provided that (1) regulations continue to protect threatened species, (2) measures to address documented threats are implemented, and (3) the subsistence community and other conservation partners commit to working together. With these dual objectives in mind, the Service, working with North Slope partners, developed measures in 2009 to further reduce the potential for shooting mortality or injury of closed species. These conservation measures included: (1) Increased waterfowl hunter outreach and community awareness through partnering with the North Slope Migratory Bird Task Force; and (2) continued enforcement of the migratory bird regulations that are protective of listed eiders.

This proposed rule continues to focus on the North Slope from Barrow to Point Hope because Steller's eiders from the listed Alaska breeding population are known to breed and migrate there, and harvest survey data and direct observations indicate take during subsistence harvest has occurred there. These proposed regulations are designed to address several ongoing eider-management needs by clarifying for subsistence users that (1) Service law enforcement personnel have authority to verify species of birds possessed by hunters, and (2) it is illegal to possess any species of bird closed to harvest. This proposed rule also describes how the Service's existing authority of emergency closure would be implemented, if necessary, to protect Steller's eiders. We are always willing to discuss regulations with our partners on the North Slope to ensure protection of closed species while providing subsistence hunters an opportunity to maintain the culture and traditional migratory bird harvest of the community. The proposed regulations pertaining to bag checks and possession of illegal birds are deemed necessary to monitor take of closed eider species during the subsistence hunt.

In collaboration with North Slope partners, a number of conservation efforts have been implemented to raise awareness and educate hunters on Steller's eider conservation via the bird fair, meetings, radio shows, signs, school visits, and one-on-one contacts. Limited intermittent monitoring on the North Slope, focused primarily at Barrow, found no evidence that listed eiders were shot in 2009 through 2012; one Steller's eider and one spectacled eider were found shot during the summer of 2013; one Steller's eider was found shot in 2014; and no listed eiders were found shot in 2015 or 2016. Elsewhere in Alaska, one spectacled eider that appeared to have been shot was found dead on the Yukon-Kuskokwim Delta in 2015. The Service acknowledges progress made with the other eider conservation measures, including

partnering with the North Slope Migratory Bird Task Force, for increased waterfowl-hunter awareness, continued enforcement of the regulations, and in-season verification of the harvest. To reduce the threat of shooting mortality of threatened eiders, we continue to work with North Slope partners to conduct education and outreach. In addition, the emergency-closure authority provides another level of assurance if an unexpected number of Steller's eiders are killed by shooting (50 CFR 92.21 and 50 CFR 92.32).

In-season harvest-monitoring information will be used to evaluate the efficacy of regulations, conservation measures, and outreach efforts. Conservation measures are being continued by the Service, with the amount of effort and emphasis being based on regulatory adherence.

The longstanding general emergency-closure provision at 50 CFR 92.21 specifies that the harvest may be closed or temporarily suspended upon finding that a continuation of the regulation allowing the harvest would pose an imminent threat to the conservation of any migratory bird population. With regard to Steller's eiders, the proposed regulations at 50 CFR 92.32, carried over from the past 6 years, clarify that we will take action under 50 CFR 92.21 as is necessary to prevent further take of Steller's eiders, and that action could include temporary or long-term closures of the harvest in all or a portion of the geographic area open to harvest. When and if mortality of threatened eiders is documented, we will evaluate each mortality event by criteria such as cause, quantity, sex, age, location, and date. We will consult with the Co-management Council when we are considering an emergency closure. If we determine that an emergency closure is necessary, we will design it to minimize its impact on the subsistence harvest.

## **Endangered Species Act Consideration**

Section 7 of the Endangered Species Act (16 U.S.C. 1536) requires the Secretary of the Interior to “review other programs administered by him (or her) and utilize such programs in furtherance of the purposes of the Act” and to “insure that any action authorized, funded, or carried out \* \* \* is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat \* \* \*.” Prior to issuance of annual spring and summer subsistence regulations, we would consult under section 7 of the Endangered Species Act of 1973, as amended (Act; 16 U.S.C. 1531 et seq.), to ensure that the 2017 subsistence harvest is not likely to jeopardize the continued existence of any species designated as endangered or threatened, or modify or destroy its critical habitat, and that the regulations are consistent with conservation programs for those species. Consultation under section 7 of the Act for the annual subsistence take regulations may cause us to change these regulations. Our biological opinion resulting from the section 7 consultation is a public document available from the person listed under **FOR FURTHER INFORMATION CONTACT.**

## **Statutory Authority**

We derive our authority to issue these regulations from the Migratory Bird Treaty Act of 1918, at 16 U.S.C. 712(1), which authorizes the Secretary of the Interior, in accordance with the treaties with Canada, Mexico, Japan, and Russia, to “issue such regulations as may be necessary to assure that the taking of migratory birds and the collection of their eggs, by the

indigenous inhabitants of the State of Alaska, shall be permitted for their own nutritional and other essential needs, as determined by the Secretary of the Interior, during seasons established so as to provide for the preservation and maintenance of stocks of migratory birds.”

## **Required Determinations**

### *Regulatory Planning and Review (Executive Orders 12866 and 13563)*

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) will review all significant rules. OIRA has determined that this proposed rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

### *Regulatory Flexibility Act*

The Department of the Interior certifies that, if adopted, this proposed rule would not have a significant economic impact on a substantial number of small entities as defined under

the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). A regulatory flexibility analysis is not required. Accordingly, a Small Entity Compliance Guide is not required. This proposed rule would legalize a pre-existing subsistence activity, and the resources harvested will be consumed.

*Small Business Regulatory Enforcement Fairness Act*

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

(a) Would not have an annual effect on the economy of \$100 million or more. It would legalize and regulate a traditional subsistence activity. It would not result in a substantial increase in subsistence harvest or a significant change in harvesting patterns. The commodities that would be regulated under this proposed rule are migratory birds. This rule deals with legalizing the subsistence harvest of migratory birds and, as such, does not involve commodities traded in the marketplace. A small economic benefit from this proposed rule would derive from the sale of equipment and ammunition to carry out subsistence hunting. Most, if not all, businesses that sell hunting equipment in rural Alaska qualify as small businesses. We have no reason to believe that this proposed rule would lead to a disproportionate distribution of benefits.

(b) Would not cause a major increase in costs or prices for consumers; individual industries; Federal, State, or local government agencies; or geographic regions. This proposed rule does not deal with traded commodities and, therefore, would not have an impact on prices for consumers.

(c) Would not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This proposed rule deals with the harvesting of wildlife for personal consumption. It would not regulate the marketplace in any way to generate substantial effects on the economy or the ability of businesses to compete.

*Unfunded Mandates Reform Act*

We have determined and certified under the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*) that this proposed rule would not impose a cost of \$100 million or more in any given year on local, State, or tribal governments or private entities. The proposed rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act is not required. Participation on regional management bodies and the Co-management Council requires travel expenses for some Alaska Native organizations and local governments. In addition, they assume some expenses related to coordinating involvement of village councils in the regulatory process. Total coordination and travel expenses for all Alaska Native organizations are estimated to be less than \$300,000 per year. In a notice of decision (65 FR 16405; March 28, 2000), we identified 7 to 12 partner organizations (Alaska Native nonprofits and local governments) to administer the regional programs. The Alaska Department of Fish and Game also incurs expenses for travel to Co-management Council and regional management body meetings. In addition, the State of Alaska will be required to provide technical staff support to each of the regional management bodies and to the Co-management

Council. Expenses for the State's involvement may exceed \$100,000 per year, but should not exceed \$150,000 per year. When funding permits, we make annual grant agreements available to the partner organizations and the Alaska Department of Fish and Game to help offset their expenses.

*Takings (Executive Order 12630)*

Under the criteria in Executive Order 12630, this proposed rule would not have significant takings implications. This proposed rule is not specific to particular land ownership, but applies to the harvesting of migratory bird resources throughout Alaska. A takings implication assessment is not required.

*Federalism (Executive Order 13132)*

Under the criteria in Executive Order 13132, this proposed rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. We discuss effects of this proposed rule on the State of Alaska in the *Unfunded these Mandates Reform Act* section, above. We worked with the State of Alaska to develop proposed regulations. Therefore, a federalism summary impact statement is not required.

*Civil Justice Reform (Executive Order 12988)*

The Department, in promulgating this proposed rule, has determined that it will not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of Executive Order 12988.



*Government-to-Government Relations with Native American Tribal Governments*

Consistent with Executive Order 13175 (65 FR 67249; November 6, 2000), "Consultation and Coordination with Indian Tribal Governments", and Department of Interior policy on Consultation with Indian Tribes (December 1, 2011), we will send letters via electronic mail to all 229 Alaska Federally recognized Indian tribes. Consistent with Congressional direction (Public Law 108-199, div. H, Sec. 161, Jan. 23, 2004, 118 Stat. 452, as amended by Public Law 108-447, div. H, title V, Sec. 518, Dec. 8, 2004, 118 Stat. 3267), we also send letters to approximately 200 Alaska Native corporations and other tribal entities in Alaska soliciting their input as to whether or not they would like the Service to consult with them on the 2017 migratory bird subsistence-harvest regulations.

We implemented the amended treaty with Canada with a focus on local involvement. The treaty calls for the creation of management bodies to ensure an effective and meaningful role for Alaska's indigenous inhabitants in the conservation of migratory birds. According to the Letter of Submittal, management bodies are to include Alaska Native, Federal, and State of Alaska representatives as equals. They develop recommendations for, among other things: seasons and bag limits, methods and means of take, law enforcement policies, population and harvest monitoring, education programs, research and use of traditional knowledge, and habitat protection. The management bodies involve village councils to the maximum extent possible in all aspects of management. To ensure maximum input at the village level, we required each of the 11 participating regions to create regional management bodies consisting of at least one representative from the participating villages. The regional management bodies meet twice

annually to review and/or submit proposals to the Statewide body.

*Paperwork Reduction Act of 1995 (PRA)*

This proposed rule does not contain any new collections of information that require Office of Management and Budget (OMB) approval under the PRA (44 U.S.C. 3501 et seq.). We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number. OMB has reviewed and approved our collection of information associated with:

- Voluntary annual household surveys that we use to determine levels of subsistence take (OMB Control Number 1018-0124, expires October 31, 2019).
- Permits associated with subsistence hunting (OMB Control Number 1018-0075, expires June 30, 2019).

*National Environmental Policy Act Consideration (42 U.S.C. 4321 et seq.)*

The annual regulations and options are considered in a November 2016 environmental assessment, “Managing Migratory Bird Subsistence Hunting in Alaska: Hunting Regulations for the 2017 Spring/Summer Harvest.” Copies are available from the person listed under **FOR FURTHER INFORMATION CONTACT** or at <http://www.regulations.gov>.

*Energy Supply, Distribution, or Use (Executive Order 13211)*

Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This is not a significant regulatory action under this Executive

Order; it would allow only for traditional subsistence harvest and improve conservation of migratory birds by allowing effective regulation of this harvest. Further, this proposed rule is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action under Executive Order 13211, and a Statement of Energy Effects is not required.

### **List of Subjects in 50 CFR Part 92**

Hunting, Treaties, Wildlife.

### **Regulation Promulgation**

For the reasons set out in the preamble, we amend title 50, chapter I, subchapter G, of the Code of Federal Regulations as follows:

### **PART 92—MIGRATORY BIRD SUBSISTENCE HARVEST IN ALASKA**

1. The authority citation for part 92 continues to read as follows:

**Authority:** 16 U.S.C. 703–712.

### **Subpart C—General Regulations Governing Subsistence Harvest**

2. Amend § 92.22 by:

- a. Redesignating paragraph (a)(3) as paragraph (a)(4);
- b. Adding a new paragraph (a)(3); and
- c. Revising paragraph (a)(6).

The addition and revision to read as follows:

**§ 92.22 Subsistence migratory bird species.**

\* \* \* \* \*

(a)(3) Emperor goose (*Chen canagica*).

\* \* \* \* \*

(a)(6) Canada goose, subspecies cackling goose.

\* \* \* \* \*

**Subpart D—Annual Regulations Governing Subsistence Harvest**

3. Amend subpart D by adding § 92.31 to read as follows:

**§ 92.31 Region-specific regulations.**

The 2017 season dates for the eligible subsistence-harvest areas are as follows:

(a) *Aleutian/Pribilof Islands Region*. (1) Northern Unit (Pribilof Islands):

(i) Season: April 2–June 30.

(ii) Closure: July 1–August 31.

(2) Central Unit (Aleutian Region’s eastern boundary on the Alaska Peninsula westward to and including Unalaska Island):

(i) Season: April 2–June 15 and July 16–August 31.

(ii) Closure: June 16–July 15.

(iii) Special Black Brant Season Closure: August 16–August 31, only in Izembek and Moffet lagoons.

(iv) Special Tundra Swan Closure: All hunting and egg gathering closed in Game

Management Units 9(D) and 10.

(3) Western Unit (Umnak Island west to and including Attu Island):

(i) Season: April 2–July 15 and August 16–August 31.

(ii) Closure: July 16–August 15.

(b) *Yukon/Kuskokwim Delta Region*. (1) Season: April 2–August 31.

(2) Closure: 30-day closure dates to be announced by the Service’s Alaska Regional Director or his designee, after consultation with field biologists and the Association of Village Council President’s Waterfowl Conservation Committee. This 30-day period will occur between June 1 and August 15 of each year. A press release announcing the actual closure dates will be forwarded to regional newspapers and radio and television stations.

(3) Special Black Brant and Cackling Canada Goose Season Hunting Closure: From the period when egg laying begins until young birds are fledged. Closure dates to be announced by the Service’s Alaska Regional Director or his designee, after consultation with field biologists and the Association of Village Council President’s Waterfowl Conservation Committee. A press release announcing the actual closure dates will be forwarded to regional newspapers and radio and television stations.

(c) *Bristol Bay Region*. (1) Season: April 2–June 14 and July 16–August 31 (general season); April 2–July 15 for seabird egg gathering only.

(2) Closure: June 15–July 15 (general season); July 16–August 31 (seabird egg gathering).

(d) *Bering Strait/Norton Sound Region*. (1) Stebbins/St. Michael Area (Point Romanof to Canal Point):

(i) Season: April 15–June 14 and July 16–August 31.

(ii) Closure: June 15–July 15.

(2) Remainder of the region:

(i) Season: April 2–June 14 and July 16–August 31 for waterfowl; April 2–July 19 and August 21–August 31 for all other birds.

(ii) Closure: June 15–July 15 for waterfowl; July 20–August 20 for all other birds.

(e) *Kodiak Archipelago Region*, except for the Kodiak Island roaded area, which is closed to the harvesting of migratory birds and their eggs. The closed area consists of all lands and waters (including exposed tidelands) east of a line extending from Crag Point in the north to the west end of Saltery Cove in the south and all lands and water south of a line extending from Termination Point along the north side of Cascade Lake extending to Anton Larsen Bay. Marine waters adjacent to the closed area are closed to harvest within 500 feet from the water's edge. The offshore islands are open to harvest.

(1) Season: April 2–June 30 and July 31–August 31 for seabirds; April 2–June 20 and July 22–August 31 for all other birds.

(2) Closure: July 1–July 30 for seabirds; June 21–July 21 for all other birds.

(f) *Northwest Arctic Region*. (1) Season: April 2–June 14 and July 16–August 31 (hunting in general); waterfowl egg gathering April 2–June 14 only; seabird egg gathering May 20–July 12 only; hunting molting/non-nesting waterfowl July 1–July 15 only.

(2) Closure: June 15–July 15, except for the taking of seabird eggs and molting/non-nesting waterfowl as provided in paragraph (f)(1) of this section.

(g) *North Slope Region*. (1) Southern Unit (Southwestern North Slope regional

boundary east to Peard Bay, everything west of the longitude line 158°30'W and south of the latitude line 70°45'N to the west bank of the Ikpikpuk River, and everything south of the latitude line 69°45'N between the west bank of the Ikpikpuk River to the east bank of Sagavinirktok River):

(i) Season: April 2–June 29 and July 30–August 31 for seabirds; April 2–June 19 and July 20–August 31 for all other birds.

(ii) Closure: June 30–July 29 for seabirds; June 20–July 19 for all other birds.

(iii) Special Black Brant Hunting Opening: From June 20–July 5. The open area consists of the coastline, from mean high water line outward to include open water, from Nokotlek Point east to longitude line 158°30'W. This includes Peard Bay, Kugrua Bay, and Wainwright Inlet, but not the Kuk and Kugrua river drainages.

(2) Northern Unit (At Peard Bay, everything east of the longitude line 158°30'W and north of the latitude line 70°45'N to west bank of the Ikpikpuk River, and everything north of the latitude line 69°45'N between the west bank of the Ikpikpuk River to the east bank of Sagavinirktok River):

(i) Season: April 2–June 6 and July 7–August 31 for king and common eiders; April 2–June 15 and July 16–August 31 for all other birds.

(ii) Closure: June 7–July 6 for king and common eiders; June 16–July 15 for all other birds.

(3) Eastern Unit (East of eastern bank of the Sagavanirktok River):

(i) Season: April 2–June 19 and July 20–August 31.

(ii) Closure: June 20–July 19.

(4) All Units: yellow-billed loons. Annually, up to 20 yellow-billed loons total for the region inadvertently entangled in subsistence fishing nets in the North Slope Region may be kept for subsistence use.

(5) North Coastal Zone (Cape Thompson north to Point Hope and east along the Arctic Ocean coastline around Point Barrow to Ross Point, including Iko Bay, and 5 miles inland).

(i) No person may at any time, by any means, or in any manner, possess or have in custody any migratory bird or part thereof, taken in violation of subparts C and D of this part.

(ii) Upon request from a Service law enforcement officer, hunters taking, attempting to take, or transporting migratory birds taken during the subsistence harvest season must present them to the officer for species identification.

(h) *Interior Region*. (1) Season: April 2–June 14 and July 16–August 31; egg gathering May 1–June 14 only.

(2) Closure: June 15–July 15.

(i) *Upper Copper River Region* (Harvest Area: Game Management Units 11 and 13) (Eligible communities: Gulkana, Chitina, Tazlina, Copper Center, Gakona, Mentasta Lake, Chistochina and Cantwell).

(1) Season: April 15–May 26 and June 27–August 31.

(2) Closure: May 27–June 26.

(3) The Copper River Basin communities listed above also documented traditional use harvesting birds in Game Management Unit 12, making them eligible to hunt in this unit using the seasons specified in paragraph (h) of this section.

(j) *Gulf of Alaska Region*. (1) Prince William Sound Area West (Harvest area: Game



Management Unit 6[D]), (Eligible Chugach communities: Chenega Bay, Tatitlek):

(i) Season: April 2–May 31 and July 1–August 31.

(ii) Closure: June 1–30.

(2) Prince William Sound Area East (Harvest area: Game Management Units 6[B] and [C] – Barrier Islands between Strawberry Channel and Softtuk Bar), (Eligible Chugach communities: Cordova, Tatitlek, and Chenega Bay):

(i) Season: April 2–April 30 (hunting); May 1–May 31 (gull egg gathering).

(ii) Closure: May 1–August 31 (hunting); April 2–30 and June 1–August 31 (gull egg gathering).

(iii) Species Open for Hunting: greater white-fronted goose; snow goose; gadwall; Eurasian and American wigeon; blue-winged and green-winged teal; mallard; northern shoveler; northern pintail; canvasback; redhead; ring-necked duck; greater and lesser scaup; king and common eider; harlequin duck; surf, white-winged, and black scoter; long-tailed duck; bufflehead; common and Barrow's goldeneye; hooded, common, and red-breasted merganser; and sandhill crane. Species open for egg gathering: glaucous-winged, herring, and mew gulls.

(iv) Use of Boats/All-Terrain Vehicles: No hunting from motorized vehicles or any form of watercraft.

(v) Special Registration: All hunters or egg gatherers must possess an annual permit, which is available from the Cordova offices of the Native Village of Eyak and the U. S. Forest Service.

(3) Kachemak Bay Area (Harvest area: Game Management Unit 15[C] South of a line

connecting the tip of Homer Spit to the mouth of Fox River) (Eligible Chugach Communities: Port Graham, Nanwalek):

(i) Season: April 2–May 31 and July 1–August 31.

(ii) Closure: June 1–30.

(k) *Cook Inlet* (Harvest area: portions of Game Management Unit 16[B] as specified below) (Eligible communities: Tyonek only):

(1) Season: April 2–May 31—That portion of Game Management Unit 16(B) south of the Skwentna River and west of the Yentna River, and August 1–31—That portion of Game Management Unit 16(B) south of the Beluga River, Beluga Lake, and the Triumvirate Glacier.

(2) Closure: June 1–July 31.

(l) *Southeast Alaska*. (1) Community of Hoonah (Harvest area: National Forest lands in Icy Strait and Cross Sound, including Middle Pass Rock near the Inian Islands, Table Rock in Cross Sound, and other traditional locations on the coast of Yakobi Island. The land and waters of Glacier Bay National Park remain closed to all subsistence harvesting (50 CFR part 100.3(a)):

(i) Season: glaucous-winged gull egg gathering only: May 15–June 30.

(ii) Closure: July 1–August 31.

(2) Communities of Craig and Hydaburg (Harvest area: small islands and adjacent shoreline of western Prince of Wales Island from Point Baker to Cape Chacon, but also including Coronation and Warren islands):

(i) Season: glaucous-winged gull egg gathering only: May 15–June 30.

(ii) Closure: July 1–August 31.

(3) Community of Yakutat (Harvest area: Icy Bay (Icy Cape to Point Riou), and coastal lands and islands bordering the Gulf of Alaska from Point Manby southeast to and including Dry Bay):

- (i) Season: glaucous-winged gull egg gathering: May 15–June 30.
- (ii) Closure: July 1–August 31.

4. Amend subpart D by adding § 92.32 to read as follows:

**§ 92.32 Emergency regulations to protect Steller’s eiders.**

Upon finding that continuation of these subsistence regulations would pose an imminent threat to the conservation of threatened Steller’s eiders (*Polysticta stelleri*), the U.S. Fish and Wildlife Service Alaska Regional Director, in consultation with the Co-management Council, will immediately under § 92.21 take action as is necessary to prevent further take. Regulation changes implemented could range from a temporary closure of duck hunting in a small geographic area to large-scale regional or Statewide long-term closures of all subsistence migratory bird hunting. These closures or temporary suspensions will remain in effect until the Regional Director, in consultation with the Co-management Council, determines that the potential for additional Steller’s eiders to be taken no longer exists.

Dated: February 1, 2017

Maureen D. Foster

Acting Assistant Secretary for Fish and Wildlife and Parks.

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